

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Petition for Reconsideration of Denial of	)	WC Docket No. 06-122
Request for Review by Maritime	)	
Communications/Land Mobile LLC on behalf	)	
of Mobex Network Services, LLC and	)	
Waterway Communications System, LLC	)	
	)	
Maritime Communications/Land Mobile	)	File No. 0002303355
LLC's Form 601 Application and Amendment	)	
for Auction No. 61	)	
	)	
Public Notice	)	DA 08-2707

To: Office of the Secretary  
Attn: Chief, Wireless Telecommunications Bureau<sup>1</sup>  
Attn: Chief, Wireline Competition Bureau

Reply Comments and Request to Deny Petition for Reconsideration

Skybridge Spectrum Foundation ("Skybridge" or "Petitioner") hereby files its reply comments to the Maritime Communications/Land Mobile LLC ("MCLM" or "Maritime") comments (the "Comments") in the above-captioned docket regarding its petition for reconsideration ("Recon") of the Order of the Chief, Wireline Competition Bureau ("WCB") denying MCLM's Request for Review (the "Review Request") of a decision of the Universal Service Administrator Company ("USAC") (DA 08-971, released August 26, 2008) denying a MCLM Request for Refund (the "Refund Request") submitted on behalf of its predecessors-in-

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<sup>1</sup> Petitioners are listing the Wireless Telecommunication Bureau here since many of the facts revealed in this proceeding are relevant to the pending Auction No. 61 proceedings concerning File No. 0002303355. Therefore, the Wireless Bureau should be aware of these matters. In addition, Petitioners will be filing a copy of these reply comments under the aforementioned File No.

interest, Mobex Network Services, LLC (“Mobex”) and Waterway Communications Systems (“Watercom”).

In its comments MCLM supports its Recon and the facts and arguments it made that the USAC and Wireline Competition Bureau erred in denying the Review Request and Refund Request, and MCLM requests that the FCC refund the Universal Service Fund (“USF”) payments that Mobex and Watercom made between 2001 and 2006 (the “Payments”). The Comments argue that the USF Payments should be refunded because Watercom provided a service that was not available to the general public and therefore should not be considered CMRS and subject to USF fees. Petitioner agrees with the reply comments being filed by Telesaurus VPC LLC et al. and in addition provide the following in response as to why the MCLM Recon should be denied and further investigation and hearings commenced by the WCB and Wireless Telecommunications Bureau.

Pending FOIA Request: FOIA Control No. 2009-089

Skybridge has a pending FOIA request, FOIA Control No. 2009-089, for all of the documents filed by MCLM in the instant proceeding regarding the Refund Request, including but not limited to those documents filed by John Reardon and MCLM that were requested by USAC and also the Forms 499 for Mobex and Watercom from 2001-2006. MCLM opposed this FOIA request. Skybridge replied citing the new open-government policies and actions of the Obama administration, now being put into effect, and the established criteria under FOIA to weigh the public interest in release of documents where that would benefit compliance with law and other important public policy matters versus private interest and withholding, including under exemption 4 of the FOIA. That matter is pending. Until that matter is finally decided (and if Skybridge does not obtain release it intends to pursue the matter on appeal) we cannot and no third party can properly submit a full analysis and position in this matter. Therefore, Skybridge

suggests the FCC hold this matter in abeyance until the final decision on its pending FOIA request.

First in the AMTS 2004 construction audit, Mobex admitted under oath that a large percentage of all of its dozens of asserted, valid site-based AMTS stations were never constructed by the deadline, even though many of those were renewed as valid stations and were initially reported as constructed. Skybridge is a plaintiff in a pending court case filed in New Jersey against MCLM and Mobex that deals with these admissions. See Court Complaint in New Jersey, Case 2:08-cv-03094-KSH-PS SKYBRIDGE SSPECTRUM FOUNDATION et al v. MOBEX NETWORK SERVICES, LLC et al. (Attached is a courtesy copy of the complaint as Exhibit 1). Among other things the court complaint deals with the admissions in the audits and failures to register and file fees with states throughout the country, as well as to Universal Service Fund. Petitioner intends in discovery in this case to obtain information that may be relevant to this subject proceeding before the FCC, to the degree that the FCC does not hold a fact finding hearing on these matters.

FCC Must Publicly Release all Relevant Information Disclosed by MCLM to FCC

Petitioner and the public cannot effectively comment on Recon without evidence MCLM submitted to FCC of its operations (information provided by Mobex including John Reardon)<sup>2</sup> since otherwise public is relying on MCLM's bald-assertions about its operations and services. Therefore, the FCC must release to the public the information that MCLM has provided to the FCC regarding this proceeding. Petitioner believes that this information should have been released by the FCC prior to request comments since it is relevant to the proceeding without which parties cannot fully analyze and comment on the matter.

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<sup>2</sup> Supplemental Information provided by John Reardon, President of MCLM LLC, on August 14, 2006 in response to the USAC's request of June 30, 2006 related to the Demand for Refund letter/document submitted by Dennis C. Brown, dated May 8, 2006, on behalf of Watercom and Mobex to the USAC.

### Conclusion

For the reasons given, the Recon should be denied. At minimum, the proceeding should be held in abeyance until the FCC releases all relevant information to the public, which it may do in part by grant of Petitioner's pending FOIA Request Control No. 2009-089.

Respectfully,

**Skybridge Spectrum Foundation, by**

*[Filed electronically. Signature on file.]*

Warren Havens

President

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Date: January 29, 2009

Exhibit 1:

Exhibit 1 follows:

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Skybridge Spectrum Foundation,  
Warren C. Havens, Telesaurus VPC, LLC,  
AMTS Consortium, LLC, Intelligent Transportation &  
Monitoring Wireless, LLC, and  
Telesaurus Holdings GC, LLC

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

SKYBRIDGE SPECTRUM FOUNDATION, a  
Delaware nonprofit corporation, WARREN C.  
HAVENS, an individual; TELESaurus VPC,  
LLC, a Delaware Limited Liability Company;  
AMTS CONSORTIUM, LLC, a Delaware  
Limited Liability Company;  
INTELLIGENT TRANSPORTATION  
& MONITORING WIRELESS, LLC, a Delaware  
Limited Liability Company; and  
TELESaurus HOLDINGS GB, LLC., a  
Delaware Limited Liability Company,

Plaintiffs,

vs.

MOBEX NETWORK SERVICES, LLC, a  
Delaware Limited Liability Company;  
MARITIME COMMUNICATIONS / LAND  
MOBILE, LLC, a Delaware Limited Liability  
Company, PAGING SYSTEMS, INC., a  
California corporation; TOUCH TEL  
CORPORATION, a California corporation, and  
DOES 1-100,

Defendants.

**FIRST AMENDED COMPLAINT**

Case No.: 08-CV-03094-KSH-PS

1 Come now Plaintiffs Skybridge Spectrum Foundation, Warren Havens, Telesaurus VPC LLC,  
2 AMTS Consortium LLC, Intelligent Transportation & Monitoring Wireless LLC, and Telesaurus  
3 Holdings GB LLC and aver and allege against Defendants as follows:

4 **PARTIES**

5 1. Skybridge Spectrum Foundation (“SSF”) is a Delaware nonprofit corporation with its  
6 principal place of business in the city of Berkeley, State of California and has been engaged in since  
7 2006 in the business of obtaining licenses issued by the Federal Communications Commission  
8 (“FCC”),<sup>1</sup> including for the State of New Jersey, including licenses in the AMTS frequency spectrum,  
9 the adjacent 220 MHz frequency spectrum, and the LMS frequency spectrum, and developing  
10 businesses to provide new wireless communications services authorized by said FCC licenses to  
11 governmental and non-governmental parties within the State of New Jersey and other States. Said FCC  
12 licenses and related businesses are subject of unlawful actions and damages by Defendants described  
13 herein. The primary purpose of SSF is to support, with certain advanced wireless techniques and  
14 systems, governmental goals and programs in the United States including the State of New Jersey in  
15 “Intelligent Transportation Systems” to reduce accidents, congestion, pollution and other problems in  
16 the nation’s transportation systems.

17 2. Plaintiff Warren C. Havens (“Havens”) is an individual residing in the City of Berkeley,  
18 State of California. Since 1988, Havens’ principal occupation and business has been obtaining licenses  
19 issued by the Federal Communications Commission (“FCC”), including for the State of New Jersey,  
20 including licenses in the AMTS frequency spectrum, and developing businesses to provide new wireless  
21 communications services authorized by said FCC licenses to governmental and non-governmental  
22 parties within the State of New Jersey and other States. Havens pursues such business principally as the  
23 founder and pre-organizational developer, majority owner, Manager, and President of the below-  
24 described Plaintiff LLCs, and as the founder, donor to, and President of SSF. In past years, Havens  
25 assigned to said LLCs virtually all of the FCC licenses he obtained (with FCC approvals), and related  
26 rights and claims, all of which were subject to unlawful actions and damages by Defendants described  
27 herein. He is also a major contributor of assets, including FCC licenses, including for the State of New  
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<sup>1</sup> Definitions for many of the terms used herein are set forth infra, p. 6.)



Jersey, to SSF directly and via his controlling interests in the other Plaintiff entities. Said FCC licenses and related businesses are subject of unlawful actions and damages by Defendants described herein.

3. Plaintiff Telesaurus VPC, LLC ("TVL") is a Delaware Limited Liability Company with its principal place of business in the city of Berkeley, State of California and has been engaged in since 1999 in the business of obtaining licenses issued by the FCC including for the State of New Jersey, including licenses in the AMTS frequency spectrum, and developing businesses to provide new wireless communications services authorized by said FCC licenses to governmental and non-governmental parties within the State of New Jersey and other States. TVL is the majority interest holder in Plaintiff ACL, described below, and caused it to donate to SSF certain portions of FCC licenses that are subject of the unlawful actions and damages by Defendants described herein. TVL is also a direct donor of FCC licenses to SSF. Said FCC licenses and related businesses are subject of unlawful actions and damages by Defendants described herein.

4. Plaintiff AMTS Consortium LLC ("ACL") is a Delaware Limited Liability Company with its principal place of business in the city of Berkeley, State of California and has been engaged in since 2004 in the business of obtaining licenses issued by the FCC including for the State of New Jersey, including licenses in the AMTS frequency spectrum, and developing businesses to provide new wireless communications services authorized by said FCC licenses to governmental and non-governmental parties within the State of New Jersey and other States. ACL is a donor of certain portions of a FCC AMTS license for parts of the State of New Jersey to SSF. Said FCC licenses and related businesses are subject of unlawful actions and damages by Defendants described herein.

5. Plaintiff Intelligent Transportation & Monitoring Wireless LLC ("ITL") is a Delaware Limited Liability Company with its principal place of business in the city of Berkeley, State of California, and has been engaged since 2005 in the business of obtaining licenses issued by the FCC including for the State of New Jersey, including licenses in the AMTS frequency spectrum, and developing businesses to provide new wireless communications services authorized by said FCC licenses to governmental and non-governmental parties within the State of New Jersey and other States. ITL was formed and is operated to support the businesses of ACL, TLV, and THL, and is also supports the business of SSF.

1           6.       Plaintiff Telesaurus Holdings GB, LLC ("THL") is a Delaware Limited Liability  
2 Company, with its principal place of business in the city of Berkeley, State of California, and has been  
3 engaged since 2001 in the business of obtaining licenses issued by the FCC including for the State of  
4 New Jersey, and developing businesses to provide new wireless communications services authorized by  
5 said FCC licenses to governmental and non-governmental parties within the State of New Jersey and  
6 other States. THL's FCC licenses are primarily licenses in the Location and Monitoring Service  
7 ("LMS") spectrum and the Multiple Address System ("MAS") spectrum (together herein, the "900 MHz  
8 Licenses" and the "900 MHz Spectrum").

9           7.       The Plaintiffs herein below are referred to below as "Plaintiffs," which shall mean all,  
10 anyone, or any combination of Plaintiffs, as the context provides. To date and at this time, Plaintiffs  
11 share common principal business office facilities (in Berkeley, California, as noted above), have the  
12 same controlling interest holder and Manager, and jointly pursue certain business plans and actions.

13           8.       Defendant Mobex Network Services, LLC ("Mobex") is, on information and belief, a  
14 Delaware Limited Liability Company with its principal places of business at Alexandria, Virginia and/or  
15 Jeffersonville, Indiana. As used herein below, "Mobex" includes Mobex, and any entities in which  
16 Mobex or its principals have legal control, and any entities that have legal control of Mobex or its  
17 principals. (Herein, by a "principal" in a legal entity, we mean a person with controlling interests on a  
18 current or fully diluted basis, considering options and other rights to voting interests as if fully  
19 exercised). Mobex has for several years operated and continues to operate, by itself or on behalf of  
20 Defendant MCLM (defined below), numerous AMTS wireless "Stations" (each, a particular transmitter  
21 location) and "Systems" (each, the physical equipment used by a Station) under FCC AMTS licenses in  
22 California, including in San Mateo County. As a past and ongoing licensee and operator (or self-alleged  
23 operator) of AMTS "Public Coast" Stations and licenses under 47 C.F.R §20.9(a)(5), Mobex has had an  
24 obligation to operate as a "Commercial Mobile Radio Service" ("CMRS") licensee and operator within  
25 that term's meaning in the Federal Communications Act, 47 U.S.C. ("FCA") and FCC rules, 47. C.F.R.  
26 ("FCC Rules") and in compliance with various FCC Orders including rules that that require taking of  
27 certain action that are deemed Orders under 47 U.S.C. §401(b). However, on information and belief, at  
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1 many, if not all of its AMTS Stations, Mobex failed to comply with said applicable FCA and FCC rules  
2 and orders.

3 9. In addition to the requirements imposed upon Mobex under Federal law, Plaintiffs are  
4 informed and believe, and thereon allege, that Mobex has failed to meet State law filing, tax, and real-  
5 estate property-access requirements for States in which Mobex purports to own and operate AMTS  
6 CMRS Stations not previously cancelled by the FCC, which evidences lack of actual operation and thus  
7 violation of various FCC Orders to surrender non-constructed or non-operational licensed stations that  
8 by Commission rule Orders “automatically terminated without specific Commission [FCC] action,” and  
9 that by related Commission Orders “automatically reverted to” the surrounding AMTS geographic  
10 licensees, which are Plaintiffs. 47 C.F.R. §§ 1.955, 1.946, 80.49, and the related license condition 46.  
11 For example, (i) see the Exhibit hereto that describes some of the alleged failures of Mobex (and the  
12 other Defendants) to register in States, including but not limited to New Jersey, New York, Texas,  
13 Illinois and California, as an out-of-State legal entity to do business in the State, a threshold requirement  
14 for any CMRS station operation in such States; (ii) in such States Mobex has not collected from its  
15 alleged customers and submitted in required State filings surcharges and other taxes which States require  
16 of CMRS operators (and that are subject to the “State tax savings provision” in the Telecommunications  
17 Act of 1996, Public Law 104-104, § 601 (c) (2) ), (iii) in such States Mobex has not filed income tax  
18 returns; (iv) in such States Mobex has not obtained and maintained required legal access to the physical  
19 antenna structures (towers, tall buildings, etc.), equipment shelters, interconnection facilities, etc. which  
20 are required for actual construction and operation of its alleged still-valid AMTS stations; and (v) in  
21 such States Mobex has not paid other sums and made other filings and satisfied other obligations  
22 imposed under State law: all of which, among other evidence, evidences lack of actual construction  
23 and/or operation required to maintain the licenses under FCC rule Orders and other Orders.

24 10. In or about 2000, Mobex acquired Regionet Wireless License LLC (“Regionet”) and  
25 obtained all of its AMTS licenses and associated Stations, Systems, and business and joint ventures, and  
26 on information and belief, assumed the assets and liabilities of Regionet. In or about 2000, Mobex also  
27 acquired Waterway Communications (“Watercom”), a corporation, and obtained all of its AMTS  
28 licenses and associated Stations, Systems, and business and joint ventures involving AMTS, and on

1 information and belief, assumed the assets and liabilities of Regionet and Watercom. Some of the acts  
2 complained of herein were done by Regionet or Watercom, and liability therefore was expressly or  
3 impliedly assumed by Mobex, and/or Regionet's and Watercom's acts were ratified by Mobex after their  
4 respective acquisitions, including in various filings before the FCC. After these acquisitions, principal  
5 personnel of Regionet and Watercom were employed by Mobex and some to this day serve in Mobex.  
6 After acquisition of Regionet and Watercom, in various FCC filings, Mobex has defended and attempted  
7 to use for its benefit AMTS-license-related assets, actions, FCC filings, joint ventures, goodwill, and  
8 other associated assets of Regionet and Watercom including those described in this Complaint. As used  
9 herein below, "Mobex" includes Mobex, Regionet, and Watercom, and any entities in which Mobex or  
10 its principals have legal control, and any entities that have legal control of Mobex or its principals  
11 (herein, by a "principal" in an legal entity, we mean a person with controlling interests on a current or  
12 fully diluted basis, considering options and other rights to voting interests as if fully exercised).

13 11. Defendant Maritime Communications/Land Mobile, LLC ("MCLM") is, on information  
14 and belief, a Delaware Limited Liability Company formed in year 2005, with offices in Mississippi. As  
15 used herein below, "MCLM" includes MCLM, and any entities in which MCLM or its principals have  
16 legal control, and any entities that have legal control of MCLM or its principals. (Herein, by a  
17 "principal" in a legal entity, we mean a person with controlling interests on a current or fully diluted  
18 basis, considering options and other rights to voting interests as if fully exercised). MCLM is engaged  
19 in business to acquire from the FCC AMTS Geographic Licenses across the United States, and to this  
20 end was the high bidder in the FCC Auction 61 that closed in August of 2005 of a number of AMTS  
21 licenses, which were then issued to MCLM, including the "Southern Pacific" A-block AMTS license  
22 which includes all of the State of California except certain remote Sierra Nevada Mountain areas. Also,  
23 MCLM and Mobex obtained approval from the FCC, and thereafter consummated, the assignment and  
24 transfer from Mobex to MCLM of all of the site-based Mobex Licenses defined below, which include  
25 many licensed stations in California. By the aforementioned actions, MCLM became the principal  
26 competitor of Plaintiffs in acquiring AMTS radio service in the United States, and the principal  
27 prospective competitor of Plaintiffs in wireless services which may be provided by AMTS licenses. As  
28 a past and ongoing licensee and operator (or self-alleged operator) of AMTS "Public Coast" Stations

1 and licenses under 47 C.F.R §20.9(a)(5), MCLM has had an obligation to operate as a “Commercial  
2 Mobile Radio Service” (“CMRS”) licensee and operator within that term’s meaning in the Federal  
3 Communications Act, 47 U.S.C. (“FCA”) and FCC rules, 47. C.F.R. (“FCC Rules”) and in compliance  
4 with various FCC Orders including rules that that require taking of certain action that are deemed Orders  
5 under 47 U.S.C. §401(b). However, on information and belief, at many, if not all of its AMTS Stations,  
6 Mobex failed to comply with said applicable FCA and FCC rules and orders.

7 12. In addition to the requirements imposed upon MCLM under Federal law, Plaintiffs are  
8 informed and believe, and thereon allege, that MCLM has failed to meet State law filing, tax, and real-  
9 estate property-access requirements for States in which Mobex purports to own and operate AMTS  
10 CMRS Stations not previously cancelled by the FCC, which evidences lack of actual operation and thus  
11 violation of various FCC Orders to surrender non-constructed or non-operational licensed stations that  
12 by Commission rule Orders “automatically terminated without specific Commission [FCC] action,” and  
13 that by related Commission Orders “automatically reverted to” the surrounding AMTS geographic  
14 licensees, which are Plaintiffs. 47 C.F.R. §§ 1.955, 1.946, 80.49, and the related license condition 46.  
15 For example, (i) see the Exhibit hereto that describes some of the alleged failures of MCLM (and the  
16 other Defendants) to register in States, including but not limited to New Jersey, New York, Texas,  
17 Illinois and California, as an out-of-State legal entity to do business in the State, a threshold requirement  
18 for any CMRS station operation in such States; (ii) in such States MCLM has not collected from its  
19 alleged customers and submitted in required State filings surcharges and other taxes which States require  
20 of CMRS operators (and that are subject to the “State tax savings provision” in the Telecommunications  
21 Act of 1996, Public Law 104-104, § 601 (c) (2) ), (iii) in such States MCLM has not filed income tax  
22 returns; (iv) in such States MCLM has not obtained and maintained required legal access to the physical  
23 antenna structures (towers, tall buildings, etc.), equipment shelters, interconnection facilities, etc. which  
24 are required for actual construction and operation of its alleged still-valid AMTS stations; and (v) in  
25 such States MCLM has not paid other sums and made other filings and satisfied other obligations  
26 imposed under State law: all of which, among other evidence, evidences lack of actual construction  
27 and/or operation required to maintain the licenses under FCC rule Orders and other Orders.  
28



1           13. Defendant Paging Systems, Inc. ("PSI") is, on information and belief, a corporation  
2 organized under the laws of the State of California with its principle place of business located in the City  
3 of Burlingame, in the County of San Mateo. As used herein below, "PSI" includes PSI, and any entities  
4 in which PSI or its principals have legal control, and any entities that have legal control of PSI or its  
5 principals. (Herein, by a "principal" in a legal entity, we mean a person with controlling interests on a  
6 current or fully diluted basis, considering options and other rights to voting interests as if fully  
7 exercised). PSI holds FCC site-based AMTS licenses for many locations in the United States (virtually  
8 all those not held by Mobex, then assigned to MCLM) and one FCC geographic AMTS license (for the  
9 Great Lakes region). Thus, as with MCLM, PSI was and remains a major competitor to Plaintiffs. PSI  
10 acted and continues to act in concert with Regionet, Mobex, and MCLM in obtaining and maintaining  
11 AMTS licenses throughout the United States and in planning and carrying out many of the unlawful  
12 actions that damaged Plaintiffs described herein. As a past and ongoing licensee and operator (or self-  
13 alleged operator) of AMTS "Public Coast" Stations and licenses under 47 C.F.R §20.9(a)(5), MCLM  
14 has had an obligation to operate as a "Commercial Mobile Radio Service" ("CMRS") licensee and  
15 operator within that term's meaning in the Federal Communications Act, 47 U.S.C. ("FCA") and FCC  
16 rules, 47. C.F.R. ("FCC Rules") and in compliance with various FCC Orders including rules that that  
17 require taking of certain action that are deemed Orders under 47 U.S.C. §401(b). However, on  
18 information and belief, at many, if not all of its AMTS Stations, Mobex failed to comply with said  
19 applicable FCA and FCC rules and orders.

20           14. In addition to the requirements imposed upon PSI under Federal law, Plaintiffs are  
21 informed and believe, and thereon allege, that PSI has failed to meet State law filing, tax, and real-estate  
22 property-access requirements for States in which PSI purports to own and operate AMTS CMRS  
23 Stations not previously cancelled by the FCC, which evidences lack of actual operation and thus  
24 violation of various FCC Orders to surrender non-constructed or non-operational licensed stations that  
25 by Commission rule Orders "automatically terminated without specific Commission [FCC] action," and  
26 that by related Commission Orders "automatically reverted to" the surrounding AMTS geographic  
27 licensees, which are Plaintiffs. 47 C.F.R. §§ 1.955, 1.946, 80.49, and the related license condition 46.  
28 For example, (i) see the Exhibit hereto that describes some of the alleged failures of PSI (and the other

1 Defendants) to register in States, including but not limited to New Jersey, New York, Texas, Illinois and  
2 California, as an out-of-State legal entity to do business in the State, a threshold requirement for any  
3 CMRS station operation in such States; (ii) in such States PSI has not collected from its alleged  
4 customers and submitted in required State filings surcharges and other taxes which States require of  
5 CMRS operators (and that are subject to the "State tax savings provision" in the Telecommunications  
6 Act of 1996, Public Law 104-104, § 601 (c) (2) ), (iii) in such States PSI has not filed income tax  
7 returns; (iv) in such States PSI has not obtained and maintained required legal access to the physical  
8 antenna structures (towers, tall buildings, etc.), equipment shelters, interconnection facilities, etc. which  
9 are required for actual construction and operation of its alleged still-valid AMTS stations; and (v) in  
10 such States PSI has not paid other sums and made other filings and satisfied other obligations imposed  
11 under State law: all of which, among other evidence, evidences lack of actual construction and/or  
12 operation required to maintain the licenses under FCC rule Orders and other Orders.

13 15. Defendant Touch Tel Corporation is ("TTC"), on information and belief, a California  
14 corporation that serves as the company set up by or adopted by PSI to carry out its alleged construction  
15 and operation of its alleged valid AMTS licensed stations across the nation. On information and belief,  
16 TCC is owned and controlled by Robert Cooper, the husband of the alleged owner and controlling party  
17 in PSI. Plaintiffs allege that PSI and TTC together, and at times with other Defendants, conspired to  
18 engage in various violations of US antitrust law under the Sherman Act, to restrain and damage  
19 Defendants and the wireless markets they compete in, with PSI, TTC, and the other Defendants.

20 16. The true names and capacities of Defendants sued as Does 1 through 100 inclusive, are  
21 currently unknown to Plaintiffs, who sues these Defendants by fictitious names Plaintiffs will seek leave  
22 to amend this Second Amended Complaint to show their true names and capacities when they have been  
23 ascertained. Plaintiffs are informed and believe and thereon allege that each of the Defendants  
24 designated as a Doe was in some manner responsible for the occurrences alleged in this Second  
25 Amended Complaint's causes of actions and proximately caused damage to Plaintiffs.

26 17. Plaintiffs are informed and believe and thereon allege that Defendants, and each of them,  
27 at all relevant times, were the agents, employees, servants, alter egos, representatives, and/or co-  
28 conspirators of their respective co-Defendants, and were at all times herein mentioned acting within the

scope, purpose, and authority of such agency, employment, service representation and conspiracy, and with the permission, knowledge and consent of their co-Defendants.

### **DEFINITIONS**

18. Certain terms are defined above, and in subsequent sections. Additional defined terms are explained as follows. The terms “Automated Marine Telecommunications Service [‘AMTS’]” refers to a certain FCC-defined wireless radio service that includes 217-218 MGz, and 219-220 MHz radio “frequencies,” sometimes also called “spectrum.” In most cases, an AMTS license contains two or more AMTS Stations.

19. The terms “Automatic Termination Without Specific Commission Action” referred to herein shall mean certain automatic loss of license rights that occurs by operation of law: 47 C.F.R. §§1.946, 1,955 and 80.49: namely, when the licensee fails to construct a Station within the requisite Construction Period, or does construct by said deadline but then fails to maintain permanent operations, the license for said Station terminates automatically without any action required on the part of the FCC.

20. The terms “Cancelled Licenses” referred to herein shall mean those licenses formerly held by Defendants that automatically terminated and were subsequently identified by the FCC as automatically terminated and thus cancelled (deleted) in the FCC public licensing database, so that the frequencies or spectrum involved could be made available for licensing to others (or, since year 2004, so that the spectrum would “automatically revert” to Plaintiffs that held the surrounding geographic licenses for the same spectrum. (Exhibit A attached hereto provides a list of these licenses.)

21. The terms “Challenged Licenses -- Ongoing” referred to herein shall mean those licenses that Defendants failed to construct and/or keep in permanent operation, or that should be otherwise revoked and/or had automatically terminated, such as or violation of US Antitrust law (under 47 U.S.C. §301), some of which are subject to ongoing administrative proceedings before the FCC (but not with regard to violation of US Antitrust law, or the State law violations alleged herein, or for matters under jurisdiction of this Court including under 47 U.S.C. §§ 207, 206, 401(b), 313, and 314, and the applicable antitrust and general savings clauses in the FCA). (Exhibit B attached hereto provides a list of these licenses.)



22. The terms "Commercial Mobile Radio Services" ("CMRS") referred to herein shall mean that type of unique radio service defined by the FCA and FCC Rules and Orders.

23. The terms "Construction Period" referred to herein shall mean the period after a license is granted within which construction must occur to preserve the grant; for a site-based AMTS license, the required component Stations must generally be "constructed" -- a system installed and commencement of its operation with certain FCC-approved equipment and certain minimum performance -- within two (2) years of the granting of the license.

24. The term "FCA" means the Federal Communications Act, also known as the Communications Act of 1934 (47 U.S.C. §151, *et seq.*)

25. The terms "FCC 2004 Audit" referred to herein shall mean the process and outcome of the FCC's review of Defendants' licenses pursuant to which about 3 dozen licenses were revoked and de-listed from the FCC's database.

26. The terms "Geographic Licenses" referred to herein are licenses issued by the FCC in public auctions, and authorized the licensees to construct and operate Stations within a defined geographic area.

27. The terms "ITS Wireless Market" referred to herein shall mean supply and demand of Intelligent Transportation Systems Wireless Service.

28. The terms "Site-Based Licenses" referred to herein are issued by the FCC prior to auctions on a first-come, first-serve basis, at no cost for the spectrum, and authorize construction and operation of systems only at the specific Station locations applied for.

29. The term "Warehousing" referred to herein shall mean the practice of acquiring licenses for the purpose of holding rather than developing them so as to prevent competitors from utilizing the licensed band and location.

### **GENERAL ALLEGATIONS**

The following continues with the general allegations commenced above.

30. Defendants' CMRS licenses upon which this Action is based fall generally into two categories, the Cancelled Licenses, on the one hand, and the Challenged Licenses -- Ongoing. To the degree that Plaintiffs rely upon the Cancelled Licenses in any stated cause of action related to a violation

1 of any FCA Rule and /or FCA section, such violations are already subject of final FCC determination  
2 actions no longer subject to any appeal or right of appeal, and/or are violations that, under FCC Rules,  
3 result in “automatic termination without specific Commission [FCC] action,” where the violation is  
4 admitted or proven by any means, including under 47 C.F.R. §§ 1.955, 1.946 and 80.49 in FCC Rules.  
5 Plaintiffs allege that such determinations, noted above, act as res judicata or collateral estoppel as to the  
6 matters decided.

7 31. To the degree that a cause of action is based upon Challenged Licenses -- Ongoing, the  
8 allegedly wrongful and anticompetitive conduct involves both the violations of Federal law (including  
9 the “use it or lose it” rules and Orders, 47 C.F.R. §§ 80.49, 1.946, 1.955, and licensing condition 46, and  
10 47 U.S.C. §§ 206, 207, 401(b), 313, and 314, on the one hand, and on the other hand, violations of State  
11 law, principally registration and taxation requirements imposed under State law.

12 32. For ease of reference herein, Plaintiffs have segregated those claims based upon the  
13 Cancelled Licenses and those claims based upon Challenged Licenses – Ongoing, which are subject to  
14 ongoing administrative proceedings.

15 33. Herein, all references to filings and information provided to the FCC by Defendants all  
16 mean filings and information: (i) that Defendants publicly submitted, for their commercial purposes, for  
17 FCC publication on the FCC public website (including its “Universal Licensing Service”) for purposes  
18 of communicating about Defendants’ licenses and licenses-related plans with Defendants’ competitors  
19 (including Plaintiffs), customers, and others in the marketplace; and (ii) that Defendants in other ways  
20 (not through the FCC) released into the marketplace for such purposes.

21 34. Plaintiffs have cooperated to obtain and use, and have informed the FCC, the Defendants  
22 directly, and the general public in public releases, that they have cooperated to obtain and use, their FCC  
23 licenses principally for providing new, advanced, wireless services essential for “Intelligent  
24 Transportation Systems” (“ITS”) as defined and supported by the US Department of Transportation, the  
25 California Department of Transportation and other State of California agencies, the FCC, and other  
26 federal and State agencies. This is a unique, new wireless market in the United States (the “ITS  
27 Wireless Market”). In decisions regarding Defendants, the FCC has decided that AMTS license  
28 Systems and services may compete with LMS licensed Systems and services. LMS is defined by the

1 FCC in 47 C.F.R §90.350 *et. seq.* as an ITS radio service. Defendants have conspired to and have in fact  
2 jointly acted, as further described below, to unfairly compete with and unlawfully restrain Plaintiffs in  
3 their pursuit of wireless services for the ITS Wireless Market in California and other States, and have  
4 also willfully conspired with one another to restrain competition and trade in the ITS Wireless Market  
5 itself, in California and other States.

6 35. Plaintiffs are pursuing said cooperative ITS wireless business plan for the ITS Market,  
7 each described above, under a research contract with the University of California, a publicly funded  
8 State of California institution (the "UC Contract"). In addition, to raise funds for and further said  
9 cooperative ITS business plan, Plaintiffs have entered into contracts with several parties to sell,  
10 exchange, and acquire FCC licenses ("the FCC Licenses Assignment Contracts"). Further, Plaintiffs  
11 have contracts with third-parties, including the Berkeley Spectrum Investment Fund LLC and its  
12 Manager Channing Jones and affiliates, with principal offices in Berkeley, California, who provide  
13 financing for said business plan (the "Financing Contracts"). Plaintiffs and their interest holders also  
14 have executed charitable contributions, under agreements, and pledges for future contribution  
15 agreements, to nonprofit corporations: The Tides Foundation, with principal offices in San Francisco,  
16 California; and Skybridge Spectrum Foundation, with principal offices in Berkeley, California (the  
17 "Charitable Contracts"). Plaintiffs and their interest holders have also executed contracts with  
18 employees and other third-parties, all residents of the State of California, that provide certain non-voting  
19 non-controlling rights of future potential economic distributions (the "Distribution Contracts"). (The  
20 UC Contract, the FCC Licenses Assignment Contracts, the Financing Contracts, the Charitable  
21 Contracts, and the Distribution Contracts are herein together, the "Third Party Contracts," and the third-  
22 parties involved in these contracts, the "Contract Third Parties"). All of the Third Party Contracts  
23 involve provide value to the Contract Third Parties and Plaintiffs based upon the FCC AMTS licenses  
24 that the Plaintiffs have attempted to obtain and those actually obtained. Plaintiffs' rights and obligations  
25 under of the Third Party Contracts, as well as their other past and prospective business, have been and  
26 will continue to be interfered with and adversely affected by the unlawful encumbrances to and other  
27 adverse actions against said AMTS licenses and license attempts by the unlawful actions of Defendants  
28 described herein ("Defendant License Encumbrances"). Plaintiffs informed Defendants of the Third

1 Party Contracts, and the Defendant License Encumbrances were undertaken and are being sustained to  
2 knowingly cause damaged to Plaintiffs.

3 36. In addition, Defendants directly interfered with Third Party Contracts, including:

4 (a.) the contract between Plaintiff ACL and Thomas Kurian ("T. Kurian"), a resident  
5 of the State of Nevada (the "Kurian Contract"); and

6 (b.) the contract between ACL and Northeast Utilities Service Company ("NUSCO"),  
7 a corporation with its principal offices in the State of Connecticut (the "NUSCO Contract").

8 37. In the matter of the Kurian Contract, said tortuous interference has included, principally  
9 by acts of MCLM with cooperation from PSI:

10 (a) causing financing, and otherwise supporting the former wife of T. Kurian to make  
11 false and otherwise baseless claims, including that T. Kurian representations and warranties in  
12 the Kurian Contract that he held, individually, free and clear title to a certain FCC AMTS license  
13 and had legal authority to enter the Kurian Contract to assign said license to ACL were false;

14 (b) making false statements to T. Kurian, including about ACL, that has caused him to  
15 breach provisions in the Kurian Contract; and

16 (c) by such actions, delaying the consummation of the transactions subject of the Kurian  
17 Contract and leading ultimately to the refusal of T. Kurian to consummate the transaction;

18 38. In the matter of the NUSCO Contract, said tortuous interference has included, principally  
19 by acts of PSI with cooperation from MCLM, making false claims to NUSCO and other parties of  
20 alleged encumbrances in a certain FCC AMTS license held by ACL that ACL agreed to assign to  
21 NUSCO under the NUSCO Contract. Said false claims of encumbrance were based upon PSI's false  
22 claim to AMTS licensed spectrum in the greater New York City region, including, based on said false  
23 spectrum claims of an "interference contour" extending into the southeast part of the State of  
24 Connecticut. These false claims were the direct and sole cause of ACL losing monetary rights and  
25 payments it otherwise would have obtained from NUSCO under the NUSCO Contract by delayed  
26 payments that ACL did receive from NUSCO under the NUSCO Contract, which caused other  
27 damages. The damages to ACL caused by said interference to the Kurian Contract and said  
28 interference to the NUSCO Contract are each in excess of One Million Dollars (\$1,000,000) to date,

1 and further damages are accruing. Defendants knew said false claims were false and made them with  
2 the intention to cause said interference and damages, and to restrain Plaintiffs in pursuit of their ITS  
3 Wireless Market plans and business, and to restrain trade in the ITS Wireless Market.

4 39. Beginning years ago, Defendants cooperatively applied for and were granted by the FCC  
5 certain site-based AMTS licenses for a large portion of the United States, including at least twenty-two  
6 (22) Stations in the State of California. The cooperation included, among other things:

7 (a.) an agreement, that was fully acted out, not to compete in seeking AMTS licenses,  
8 and to block others from obtaining AMTS licenses, in the context of FCC Orders and rules that required  
9 competition in AMTS including by allowing only one half of the total AMTS spectrum to any entity or  
10 closely affiliated or cooperative group;

11 (b.) coordinated license applications in most major markets of the nation;

12 (c.) co-location of license Stations in many regions;

13 (d.) coordinated reporting of most all Station activations with unique language  
14 defective under FCC rules, including many entirely false activation reports;

15 (e.) coordinated false assertions before the FCC, competitors, and the general  
16 marketplace of AMTS license operations and valid licenses in many markets;

17 (f.) coordinated renewals of AMTS licenses that had terminated and that were thus  
18 fraudulent and against FCC Rules and the FCA;

19 (g.) coordinated attempts to delay and block FCC Auction 57 when Defendants failed  
20 to raise substantial funds to compete in said auction against Plaintiffs, who had demonstrated to the FCC  
21 and Defendants a multiple o the cash that Defendants had to compete in the auction; and

22 (h.) scores of coordinated FCC filings and related public disclosures related to their  
23 AMTS licenses.

24 40. Defendants have alleged and still allege in the marketplace that they hold and operate  
25 AMTS licenses and operating Stations that are valid under FCC rules. Beginning in 2004, Plaintiffs  
26 obtained and continue to hold valid "geographic" (and previously several site-based) AMTS licenses  
27 and are developing business opportunities for them, principally in the ITS Wireless Market, in most  
28

1 areas of the United States in which Defendants allege they hold and operate valid AMTS A-block  
2 licenses.

3 41. "Geographic" licenses are issued by the FCC in public auctions, and authorize the  
4 licensees to construct and operate Stations within a defined geographic area. Each AMTS geographic  
5 license involves a number of States. "Site-based" licenses are issued by the FCC prior to auctions (and  
6 such licensing permanently ceases before the auctions) on a first-come, first-serve basis, at no cost for  
7 the spectrum, and authorize construction and operation of systems only at the specific Station locations  
8 applied for. FCC rules and Orders (i) prohibit the use under AMTS Geographic Licenses of the  
9 spectrum authorized in the license within a certain range of pre-existing, still-valid site-based licensed  
10 Stations for the same spectrum, but (ii) if any such site-based licensed Station is terminated for any  
11 reason, then the AMTS spectrum and service territory authorized said Site-Based Licenses  
12 "automatically reverts to" the said surrounding geographic license.

13 42. Certain FCC Rules require that when a site-based AMTS license is issued, the required  
14 component Stations must be "constructed" (a system installed and its operation commenced with certain  
15 FCC-approved equipment and certain minimum performance) within two (2) years of the granting of the  
16 license (and any FCC-granted extension thereof upon a showing of good cause [the "Construction  
17 Period"])). If and when the licensee fails to construct a Station within the requisite Construction Period,  
18 or constructs a Station timely but allows operation to permanently discontinue, the license for said  
19 Station terminates automatically without any action required on the part of the FCC. (47 C.F.R., §§1.946,  
20 1.955 and 80.49 and license condition 46). In such a case, the holder of the former license is required by  
21 such rules, that are Orders as meant by 47 U.S.C. §401(b), to notify the FCC of said termination for  
22 cancellation (recognition of the automatic termination) in its public license database (currently, the  
23 electronic "Universal Licensing Service," or "ULS"). However, the license is terminated by action of  
24 law, regardless of whether the licensee has submitted the notification for cancellation. The FCC's ULS  
25 database includes both existing valid licenses and wireless frequencies of licenses that were cancelled or  
26 are otherwise available for current or future license applications. This FCC's license and frequency  
27 database is the official and primary source relied upon by parties seeking licenses, by parties seeking to  
28 buy or lease existing licensed spectrum or partner with licensees, and by parties considering bidding for



1 Geographic Licenses in upcoming spectrum auctions including, in assessing the value and practicality of  
2 the licenses available at the auction (in large part based on the level of encumbrance by Site-Based  
3 Licenses listed as valid on the ULS database), in raising funds to bid in the auction, etc. Surrender of  
4 licenses or licenses' component Stations that automatically terminated due to failure to meet the  
5 construction requirement by the end of the Construction Period, or the permanent-operation requirement,  
6 or that otherwise terminated, for said cancellation is required to prevent spectrum hoarding and  
7 Warehousing (described below), and since operation of any Station under a terminated license is  
8 prohibited by the FCA and FCC Rules. It is a fundamental requirement to have a valid license to  
9 operate any licensed spectrum in the United States, and equally fundamental to surrender terminated  
10 licenses. Failing to surrender licenses that are legally terminated because of failure to be constructed  
11 within the allotted time, or other cause, is unlawful conduct and is not a "statement" in any  
12 "proceeding."

13 43. On the other hand, if and when a licensee completes the required construction during the  
14 Construction Period, the licensee is required to notify the FCC of this by a filing, currently on FCC  
15 Form 601, with certain details and certifications under oath and under penalty of criminal prosecution  
16 and license revocation for false information. Such routine notification is required by the FCC for  
17 licensing under its rules and maintenance of its public licensing database, and such notification a  
18 ministerial act is not a "statement" in any official "proceeding" whether true or false.

19 44. A number of years ago, Defendants began applying for and obtaining from the FCC, for  
20 free, site-based AMTS licenses (see above) in a large percentage of the major urban markets and high-  
21 use waterways throughout the United States, including virtually the entire lengths of the west coast of  
22 the States of California, Oregon and Washington. (Herein, all such licenses obtained in any way by  
23 Defendants in the United States are called the "Defendant Licenses"). The Defendants Licenses were  
24 obtained pursuant to a scheme of bandwidth hoarding and "Warehousing" whereby Defendant's purpose  
25 was not to construct and operate systems to service the public but to lock-up AMTS spectrum in major  
26 markets, and thereby lockout competition by Plaintiffs and other potential licensees, including by  
27 making the large surrounding geographical licenses for the same frequencies, which the FCC intended to  
28 auction in the near future, less economically viable to competitors, thus discouraging competition in the

1 auction. As part of this scheme, Defendants intended to eventually obtain AMTS Geographic Licenses,  
2 when the FCC eventually auctioned off such licenses, at a substantial discount (compared to the price  
3 Defendants would have had to pay had it not by this scheme held the Defendants Licenses), because the  
4 extensive scope of the Defendants Licenses would discourage others from bidding in the auctions.  
5 Alternatively, Defendants intended to obtain other value from the Defendants Licenses such as by sale  
6 or lease of said licenses to successful bidders for these Geographic Licenses that would be encumbered  
7 by the Defendants' Licenses.

8 45. These and other actions and omissions by Defendants employed in their spectrum  
9 hoarding and Warehousing scheme, blocked Plaintiffs and other competitors of Defendants from  
10 obtaining from the FCC AMTS licenses they otherwise would have obtained, and suppressed  
11 competition in a relevant market, and in other ways injured Plaintiffs and the market which AMTS  
12 spectrum serves. Spectrum hoarding and Warehousing is against the public-interest purpose of wireless  
13 licensing and license applications in the FCA, FCC Rules and also breaches the State of California and  
14 Federal laws protecting against anti-competitive conspiracies and actions.

15 46. Defendants failed to construct a major percentage of the Defendants Licenses component  
16 Stations within the Construction Period set by the FCC, described above. This was determined by an  
17 FCC 2004 Audit of Defendants Licenses in 2004, including Defendants admissions in said audit, after  
18 previously falsely reporting said Stations as properly and timely constructed. As described above, this  
19 resulted in cancellation of the licenses for said Stations since they had, as of the date of said failure,  
20 automatically terminated under law. For years following such failures to construct and resultant  
21 automatic terminations, Defendants deliberately hid said failures and terminations from the FCC,  
22 Plaintiffs and other competitors, and the relevant market, each of whom had a right to know the true  
23 facts. Instead, Defendants sent a series of false Station activation notices to the FCC (intended and  
24 effectively provided said competitors and market, also, by FCC publication) that falsely and fraudulently  
25 claimed that the required construction by the construction deadline would either imminently be satisfied  
26 or had been satisfied. The FCC initially accepted these as truthful factual reports of timely construction  
27 under its applicable rules, without any deliberative proceedings, in accordance with standard FCC  
28 procedure. Subsequently, Defendants submitted various filings before the FCC falsely representing that



1 these Stations were in operation and providing certain coverage and public service in an attempt to  
2 maintain Defendants Licenses and component Stations that had automatically terminated. (Some such  
3 false representations were made in contested proceedings before the FCC: In regards to these and other  
4 Defendants' communications with the FCC described herein, see paragraphs 13 and 14 above as to their  
5 usage herein.)

6 47. Regarding the remaining Defendants Licenses (those not terminated and cancelled as  
7 described above), for years after their applicable construction deadlines Defendants failed to file with  
8 the FCC either the required notice of construction or the required notice of failure to construct.  
9 Although in response to the above-noted 2004 FCC audit, Defendants responded that they did timely  
10 construct these Stations. (Defendants have continued to maintain these Stations in the marketplace,  
11 including by public releases over the Internet, operations with local two-way radio agents of Defendants,  
12 relationships with Motorola and other companies, etc.) Defendants have still not filed the required  
13 notices of construction with the FCC, nor filed required filings with the States involved (including  
14 departments of corporation and revenue), taken other actions required if the subject Stations were in fact  
15 in operation and not automatically terminated (without specific FCC action) under applicable FCC Rules  
16 and also subject termination under applicable States laws. Such unlawful operation of said terminated  
17 license' Stations unlawfully block and damage Plaintiffs since the spectrum involved in terminated site  
18 based Stations "automatically reverts" to the surrounding geographic license (as noted above which in  
19 this case are Plaintiffs.)

20 48. Whether or not Defendants actually constructed these Stations, Defendants falsely and  
21 fraudulently maintained these as well as associated licensed Stations before the FCC by asserting before  
22 the FCC in ministerial license-application filings (which were no "proceedings") as well as various  
23 Defendants' public releases aimed at Plaintiffs, other competitors, and the relevant market, that they  
24 satisfied the *sine qua non* technical "coverage" requirement of site-based AMTS license by the coverage  
25 deadline, absent which the license automatically terminated. For site-based AMTS licenses, at  
26 minimum in all cases the require "coverage" consists of construction of two or more Stations with  
27 overlapping radio-service coverage under a certain technical standard which these Defendants' Stations  
28 demonstrably failed to satisfy, as Defendants knew. Defendants hid these defects from the FCC,

1 Plaintiffs and other competitors, and the relevant market. As with the construction requirement and  
2 deadline an AMTS license “automatically terminates, without specific [FCC] action” if the coverage  
3 requirement is not satisfied by the coverage deadline (47 C.F.R. Section 1.946), and as noted above,  
4 licenses that have terminated must be returned to the FCC for cancellation so that the FCC and the  
5 public understand that the subject spectrum is available and to prevent spectrum hoarding and  
6 Warehousing. However, Defendants have not returned any of these terminated censes for cancellation,  
7 and therefore the FCC has not recognized such termination by cancellation of such Stations in its  
8 licensing database and the spectrum involved remains hoarded and warehoused, and not available to  
9 Plaintiffs by the above-noted “automatic reversion.”

10 49. Moreover, in a recent request to the FCC Universal Fund Administrator, MLMC admitted  
11 that it was not operating AMTS stations as Commercial Mobile Radio Service (CMRS) stations. Under  
12 the applicable FCC Rules, MLMC's failure to operate the AMTS stations as CMRS stations renders  
13 those licenses automatically terminated and invalid. Nevertheless, defendants have falsely stated, as  
14 noted above, that the licenses are valid and active, in furtherance of their scheme of unlawful hoarding  
15 and warehousing.

16 50. Said Defendants actions and inactions were done pursuant to a conspiracy between the  
17 Defendants to suppress competition in relevant economic and geographic markets for licenses and radio  
18 service, as well as to unlawfully obtain or maintain monopolies in certain geographic markets. In  
19 addition, said Defendants actions and inactions to withhold from Plaintiffs clear title and profitable use  
20 of AMTS spectrum they rightfully own free and clear, unjustly enriched Defendants and unlawfully  
21 converted substantial parts of Plaintiffs' geographic AMTS licenses, which are intangible assets clearly  
22 “merged in documents:” distinct FCC licenses in paper and electronic format.

23 51. During their history and to this day, intending to perpetuate the above-described wrongful  
24 purposes, actions and inactions, Defendants have repeatedly and falsely represented to Plaintiffs, other  
25 competitors, and the relevant market, including but not limited to, public disclosures filed with the FCC  
26 for FCC publication that they were providing, with the required FCC approved equipment, actual  
27 maritime wireless services required of their AMTS licensed Stations throughout the nation, including  
28 most of the Atlantic, Pacific, Gulf Coast, and Great Lakes coast lines, and the Mississippi and other

1 major inland waterway systems. Such maritime coverage was, when Defendants obtained the  
2 Defendants' Licenses and up through these licenses' construction-coverage deadlines, the required  
3 service (service to customers on land was a permitted ancillary service if the required maritime service  
4 was provided and given priority). The failure to provide said required maritime service by the  
5 construction deadline resulted in "Automatic Termination Without Specific Commission Action."  
6 Defendants knew its broad public representations in this regard were not true and Defendants made  
7 these false representations for the unlawful purpose to hoard and warehouse spectrum; unfairly compete  
8 with, interfere, restrain, and damage Plaintiffs; restrain the competition and trade in relevant markets;  
9 and conceal and perpetuate conversion of spectrum that belong to Plaintiffs, as described above.

10 52. Similarly, for the same wrongful purposes and with the like damaging effects, Defendants  
11 previously and to this day publicly assert (including before the FCC, wireless equipment vendors,  
12 financing parties, competitors, and prospective end users of such licenses and wireless services based on  
13 such licenses) other deliberately false information to attempt to mislead the noted parties and relevant  
14 market as to the automatic termination status of many of Defendants licenses, including with regard to:  
15 (i) failure to construct and operate by the construction deadline Stations with the required CMRS-  
16 capable equipment that actually provided CMRS service; (ii) use of token equipment Systems in  
17 asserted Station construction and operation that did not transmit radio signals for purpose of actual  
18 commercial service, and/or (iii) was not installed and operated with any Station site lease or other  
19 agreement from the site owner or manager (but was, as Defendants publicly disclosed to the FCC, used  
20 only to "commence testing to commence service" or the like), where the fact of such failure or the fact  
21 of such token Systems results in "Automatic Termination Without Specific Commission Action" under  
22 FCC rules for lack of timely required construction and commencement of commercial operations.

23 53. As stated above, Plaintiffs were the high bidders and eventual licensees of certain AMTS  
24 Geographic Licenses sold in the FCC's two AMTS auction held in 2004 and 2005, which in the  
25 aggregate covered all of the United States except for the area defined by the FCC centered around the  
26 Great Lakes. These Plaintiffs' geographic AMTS licenses are each for 1 MHz of AMTS spectrum, and  
27 are subject to an FCC rule which prohibits the operation of geographic-license Stations within a certain  
28 range of valid existing Stations under valid site-based AMTS licenses authorized to use the same 1

1 MHz. Defendants' wrongful maintenance of Site-Based Licenses as described above interfered with  
2 Plaintiffs' prospective business advantage to which Plaintiffs were entitled due to their having obtained  
3 the valid geographical licenses as set forth above, and also unlawfully withheld and converted spectrum  
4 Plaintiffs are entitled to utilize under the FCC Rules concerning "automatic termination" and related  
5 "automatic reversion" explained above. Further, Defendants continued publically to assert prior to the  
6 AMTS auctions the validity of the terminated Stations and made false representations as to leases,  
7 construction, interconnecting and other services. Defendants deliberately restrained and reduced the  
8 ability of Plaintiffs to raise funds and increased their cost of funds for participating in these auctions.  
9 This directly resulted in Plaintiffs loss of winning bids in these auctions in competition with Defendants,  
10 and other losses, resulting in damages in excess of \$40 million, according to proof at trial.

11 54. As indicated above, Defendants also, individually and in cooperation, have for years  
12 maintained their AMTS licenses and component Stations that have were not cancelled as a result of the  
13 noted 2004 audit -- in violation of applicable sections of the FCA including 47 U.S.C. §314, and of FCC  
14 Rules and Orders, including 47 C.F.R. §§1.946, 1.955, 80.49, and license condition 46, with the effect of  
15 also violating US antitrust law by unlawfully restraining and damaging Plaintiffs and the relevant  
16 wireless markets-- by not actually constructing and/or keeping in operation said Stations, as evidenced  
17 by their not complying with the threshold laws required of any actual construction and operation of such  
18 stations, of the States in which such Stations exist or have FCC defined "service contours," including  
19 registration of out-of-State legal entities doing business in the State, paying the attendant annual fees,  
20 filing State tax returns and paying required taxes; obtaining and maintaining Station-site leases (to  
21 access and use antenna sites); and filing annual reports required under FCA and FCC Rules and Orders  
22 with the Universal Service Fund Administration and paying the required percentages of income from  
23 subscribers.

24 55. Throughout their history and conduct described above and at all times, Defendants  
25 conspired to act and acted deliberately and in full knowledge of applicable California law, applicable  
26 FCC Rules and Federal Communications Act sections, and other applicable law, with the intent and  
27 expectation to carry out the unlawful purposes, actions, and concealments described above.  
28

**FIRST CAUSE OF ACTION**  
**(Restraint of Trade: Sherman Act, 15 U.S.C., Section 1,**  
**and 47 U.S.C. §§ 313 and 314)**

56. Plaintiffs incorporate by reference the allegations all preceding paragraphs as though fully set forth herein.

57. Defendants have violated the Section 1 of the Sherman Act, and Sections 313 and 314 of the FCA, by committing the wrongful acts described herein, including but not limited to:

(a.) Hoarding and Warehousing licenses when Defendants knew or should have known that they could not and did not comply with their obligation to timely construct the licensed Stations and provide required coverage and service to the public;

(b.) Failing to pay fees, taxes and other costs imposed and required under State law in each State where Defendants purport to own and operate CMRS licenses, which violations unfairly reduce Defendants' costs of doing business in violation of public policy and furthered their anticompetitive scheme;

(c.) Falsely representing to the industry, and in factual reporting to the FCC which was intended to be seen and relied on by potential competitors and others in the industry, that certain Stations had been or would imminently be timely constructed and operated to serve the public. Such untrue statements, even as to licenses deemed valid or not yet revoked or fined by the FCC, nevertheless harmed and harm plaintiffs and restrained plaintiffs' business – for example, defendants directly discouraged potential and existing customers of plaintiffs from consummating spectrum transactions by falsely representing construction status and coverage, intercommunications, antenna site leases and other aspects of service.

(d.) Deliberately failing, for years after licensed Stations automatically terminated due to Defendants' failure to construct timely Stations, to report such failure and termination to the FCC, as required for FCC cancellation of the Station licenses and for public disclosures thereof, including to Plaintiffs;

(e.) Falsely representing to the industry, and in factual reporting to the FCC which was intended to be seen and relied on by potential competitors and others in the industry, that Defendants had complied with their obligation to provide overlapping, continuous coverage along

1 certain minimum lengths of waterways when in fact they failed to do so, including since Defendants had  
2 not constructed many of the Stations it was required by their licenses to construct, thereby inducing  
3 customers and potential customers from doing business with plaintiffs;

4 (f.) Falsely representing to the FCC and other parties that Defendants were providing  
5 required service to the maritime users;

6 (g.) Falsely representing to the FCC and other parties that Defendants used system  
7 equipment that complied with all FCC requirements for AMTS;

8 (h.) Renewing licenses that had terminated, and operating stations without any FCC  
9 license, and failing to disclose these unlawful actions to the FCC and public;

10 (i.) As the FCC has determined by final action: in competition against Plaintiffs,  
11 MCLM falsely represented to the FCC that it was qualified to obtain a 35% bidding credit for the FCC  
12 "Auction 61" of AMTS licenses, and that it did not have various affiliates that it in fact did have, and  
13 other false representations; and bidding in said auction utilizing the falsely obtained bidding credit.

14 These and the other acts referenced herein constitute a per se violation of the Sherman Act and  
15 the FCA. Untrue statements, even as to licenses deemed valid or not yet revoked or fined by the FCC,  
16 nevertheless harmed and harm plaintiffs and restrained plaintiffs' business – for example, defendants  
17 directly discouraged potential and existing customers of plaintiffs from consummating spectrum  
18 transactions by falsely representing construction status and coverage, intercommunications, antenna site  
19 leases and other aspects of service.

20 In doing the acts described above, Defendants combined and conspired with one other for the  
21 unlawful purpose of restraining trade or preventing competition in relevant markets.

22 58. Plaintiffs have been injured in their business or property by reason of Defendants' awful  
23 combination or conspiracy, in an amount to be proven at trial. The damages are substantial, in excess of  
24 \$40 million. Plaintiffs are entitled to an award of three times the damages they sustained, preliminary  
25 and /or permanent injunctive relief, and reasonable attorneys' fees pursuant to Bus. & Prof. Code  
26 §16750, and prejudgment interest on their damages pursuant to Bus. & Prof. Code § 16761.

27 WHEREFORE, Plaintiffs pray judgment as hereinafter set forth.  
28



**SECOND CAUSE OF ACTION**  
**(Interference With Prospective Economic Advantage:**  
**Damages under 47 U.S.C. § 407)**  
**(Cancelled Licenses Only)**

59. Plaintiffs incorporate by reference the allegations of all preceding paragraphs as though fully set forth herein.

60. At all times alleged herein, as qualified and financially capable licensees and license applicants, Plaintiffs had an economically beneficial relationship with the FCC as the subject licensing authority (required for any FCC license-based wireless business), as well as with various other parties in the wireless industry critical to the competitive and economic viability of Plaintiffs including equipment providers, financiers, partners for building and operating wireless systems, and end users of FCC licenses and licensed wireless services. The existence of these relationships was known to Defendants at the times that they committed the acts complained of herein. Plaintiffs were in the business of obtaining FCC licenses for wireless services, including AMTS licenses, and developing businesses based on new wireless communications services, described above, in which good and timely business relations with such parties as noted above is essential.

61. Defendants intended to interfere with Plaintiffs' economic relationship with such essential parties by the deliberate, wrongful acts described herein including but not limited to:

(a.) Hoarding and Warehousing the Cancelled Licenses (Exhibit A hereto) when Defendants knew or should have known that they could not and did not comply with their obligation to timely construct the licensed Stations and provide required coverage and service to the public;

(b.) Falsely representing to the FCC and other parties that certain Stations had been or would imminently be timely constructed and operated to serve the public untrue statements, even as to licenses deemed valid or not yet revoked or fined by the FCC, nevertheless harmed and harm plaintiffs and restrained plaintiffs' business – for example, defendants directly discouraged potential and existing customers of plaintiffs from consummating spectrum transactions by falsely representing construction status and coverage, intercommunications, antenna site leases and other aspects of service;

(c.) Deliberately failing, for years after licensed Stations automatically terminated due to Defendants failure to timely construct the Stations, to report such failure and termination to the FCC

1 as required, for FCC cancellation of the Station licenses and for public disclosures thereof, including to  
2 Plaintiffs;

3 (d.) Falsely representing to the FCC and other parties that Defendants had complied  
4 with its obligation to provide overlapping, continuous coverage along certain minimum lengths of  
5 waterways when in fact it failed to do so, including since Defendants had not constructed many of the  
6 Stations it was required by its licenses to construct, and by such, evading automatic termination of the  
7 subject Stations due to lack of required coverage at the construction-coverage deadline;

8 (e.) Making false public and private statements to the FCC and other parties essential  
9 to Plaintiffs' business, as set forth above, so as to interfere with Plaintiffs' business relations;

10 (f.) Falsely representing to the FCC and other parties that Defendants were providing  
11 required service to the maritime users;

12 (g.) Falsely representing to the FCC and other parties that Defendants used system  
13 equipment that complied with all FCC requirements for AMTS;

14 (h.) Renewing licenses that had terminated, and operating stations without any FCC  
15 license, and failing to disclose these unlawful actions to the FCC and public;

16 (i.) As the FCC has determined by final action: in competition against Plaintiffs,  
17 MCLM falsely represented to the FCC that it was qualified to obtain a 35% bidding credit for the FCC  
18 "Auction 61" of AMTS licenses, and that it did not have various affiliates that it in fact did have, and  
19 other false representations; and bidding in said auction utilizing the falsely obtained bidding credit.

20 62. The actions and deliberate omissions of Defendants described herein took place within  
21 the two (2) years preceding the filing of this Second Amended Complaint, or were concealed by  
22 Defendants and were not reasonably discovered by Plaintiffs until less than two (2) years before the date  
23 this Second Amended Complaint was filed.

24 63. The actions and deliberate omissions of Defendants described herein interfered with  
25 Plaintiffs' relationship with such essential parties, including additional business and financing from  
26 existing customers and investors, in the various ways indicated above including, but not limited to:

27 (a.) Plaintiffs were not able to seek, obtain, and use for various economic advantages  
28 AMTS spectrum Plaintiffs were entitled to: (i) in the Defendants Licenses that had fully or in part



1 terminated by operation of law and should have been surrendered by Defendants, some of which would  
2 have been available to Plaintiffs to apply for prior to the suspension of site-based licensing (where  
3 Plaintiffs were indeed applying for all available major areas of the nation that were available), and some  
4 of which, when “automatically terminated, “automatically reverted” to Plaintiffs and, (ii) in other  
5 Geographic Licenses which Plaintiffs would have purchased in the first and second AMTS auction had  
6 its financial resources not been depleted as noted above by its defense of and attempts to mitigate  
7 Defendants’ actions and omissions to unfairly compete with, interfere, restrain, and damage and had  
8 Defendants not interfered in Plaintiffs’ relations with potential investors and sources of financing;

9 (b.) Plaintiffs’ ability and results in pursuing and obtaining certain financing  
10 including with respect to the two FCC AMTS license auctions, as well as favorable relations with  
11 equipment vendors, joint-venture candidate companies, end users of licenses and licensed systems, and  
12 others of importance to Plaintiffs licenses-based business plan, were reduced, delayed, and damaged;

13 (c.) Plaintiffs has been delayed in, and reduced or prevented from, attempting,  
14 securing and closing certain licenses spectrum-sale and license-lease opportunities (i.e., sales and leases  
15 by Plaintiffs to third parties of Plaintiffs’ valid licenses or portions thereof);

16 (d.) Plaintiffs have incurred substantial legal and other costs in its attempts to  
17 mitigate and avoid the damages caused by Defendants’ actions and omissions set forth herein. This, and  
18 the major delays in Plaintiffs’ plans and actions caused by such Defendants’ actions and omissions, has  
19 undermined Plaintiffs’ ability to focus on and secure economic advantages arising out of timely and  
20 favorable relations with and actions before the FCC and the other above-noted parties essential to  
21 Plaintiffs’ wireless business. Had Defendants acted in compliance with their legal obligations, Plaintiffs  
22 had the financial and other capability to and would have (i) applied for and obtained the AMTS  
23 spectrum in the Defendants Licenses and 2 placed this spectrum into operation of Stations, leases, sales,  
24 and other uses, and (ii) succeeded in securing other economic advantages indicated above in relation to  
25 the FCC, equipment companies, financing parties, and others in the wireless industry. Defendants’  
26 interference with Plaintiffs’ business relationship with the FCC and such other parties has caused  
27 damages in an amount to be proven at trial.

64. Due to Defendants' actions and omissions, Plaintiffs were blocked from seeking and obtaining from the FCC the spectrum in the Defendants Licenses and elsewhere in the United States from the time Plaintiffs were formed until the FCC terminated any possibility of seeking such spectrum by its freezing all licensing in the AMTS service for a period of time prior to its new exclusive method of AMTS licensing by auctioning Geographic Licenses. As a direct and proximate result of Defendants' interference, Plaintiffs incurred damages in an amount to be proven at trial.

65. The actions and deliberate omissions of Defendants were fraudulent, oppressive and malicious and were done either with the intent to injure the business of Plaintiffs or, at minimum in some cases, done with reckless disregard of a high probability that Plaintiffs would be damaged thereby. Plaintiffs are therefore entitled to an award of punitive damages from Defendants in an amount appropriate to punish and make an example of Defendants.

WHEREFORE, Plaintiffs pray judgment as hereinafter set forth.

**THIRD CAUSE OF ACTION**  
**(Interference With Prospective Economic Advantage,**  
**Damages under 47 U.S.C. § 407)**  
**(Challenged Licenses -- Ongoing)**

66. Plaintiffs incorporate by reference the allegations of all preceding paragraphs as though fully set forth herein.

67. At all times alleged herein, as qualified and financially capable licensees and license applicants, Plaintiffs had an economically beneficial relationship with the FCC as the subject licensing authority (required for any FCC license-based wireless business), as well as with various other parties in the wireless industry critical to the competitive and economic viability of Plaintiffs including equipment providers, financiers, partners for building and operating wireless systems, and end users of FCC licenses and licensed wireless services. The existence of these relationships was known to Defendants at the times that they committed the acts complained of herein. Plaintiffs were in the business of obtaining FCC licenses for wireless services, including AMTS licenses, and developing businesses based on new wireless communications services, described above, in which good and timely business relations with such parties as noted above is essential.

68. Defendants intended to interfere with Plaintiffs' economic relationship with such essential parties by the deliberate, wrongful acts described herein including but not limited to:

1 (a.) Hoarding and Warehousing the Challenged Licenses -- Ongoing (Exhibit B  
2 hereto) when Defendants knew or should have known that they could not and did not comply with their  
3 obligation to timely construct the licensed Stations and provide required coverage and service to the  
4 public;

5 (b.) Falsely representing to the FCC and other parties that certain Stations had been or  
6 would imminently be timely constructed and operated to serve the public;

7 (c.) Deliberately failing, for years after licensed Stations automatically terminated due  
8 to Defendants failure to timely construct the Stations, to report such failure and termination to the FCC  
9 as required, for FCC cancellation of the Station licenses and for public disclosures thereof, including to  
10 Plaintiffs;

11 (d.) Falsely representing to the FCC and other parties that Defendants had complied  
12 with its obligation to provide overlapping, continuous coverage along certain minimum lengths of  
13 waterways when in fact it failed to do so, including since Defendants had not constructed many of the  
14 Stations it was required by its licenses to construct, and by such, evading automatic termination of the  
15 subject Stations due to lack of required coverage at the construction-coverage deadline;

16 (e.) Making false public and private statements to the FCC and other parties essential  
17 to Plaintiffs' business, as set forth above, so as to interfere with Plaintiffs' business relations;

18 (f.) Falsely representing to the FCC and other parties that Defendants were providing  
19 required service to the maritime users;

20 (g.) Falsely representing to the FCC and other parties that Defendants used system  
21 equipment that complied with all FCC requirements for AMTS;

22 (h.) Renewing licenses that had terminated, and operating stations without any FCC  
23 license, and failing to disclose these unlawful actions to the FCC and public;

24 69. The actions and deliberate omissions of Defendants described herein took place within  
25 the two (2) years preceding the filing of the Complaint herein, or were concealed by Defendants and  
26 were not reasonably discovered by Plaintiffs until less than two (2) years before the date the Complaint  
27 was filed.  
28

1           70.     The actions and deliberate omissions of Defendants described herein interfered with  
2 Plaintiffs' relationship with such essential parties, including additional business and financing from  
3 existing customers and investors, in the various ways indicated above including, but not limited to:

4           (a.)     Plaintiffs were not able to seek, obtain, and use for various economic advantages  
5 AMTS spectrum Plaintiffs were entitled to: (i) in the Defendants Licenses that had fully or in part  
6 terminated by operation of law and should have been surrendered by Defendants, some of which would  
7 have been available to Plaintiffs to apply for prior to the suspension of site-based licensing (where  
8 Plaintiffs were indeed applying for all available major areas of the nation that were available), and some  
9 of which, when "automatically terminated, "automatically reverted" to Plaintiffs and, (ii) in other  
10 Geographic Licenses which Plaintiffs would have purchased in the first and second AMTS auction had  
11 its financial resources not been depleted as noted above by its defense of and attempts to mitigate  
12 Defendants' actions and omissions to unfairly compete with, interfere, restrain, and damage and had  
13 Defendants not interfered in Plaintiffs' relations with potential investors and sources of financing;

14           (b.)     Plaintiffs' ability and results in pursuing and obtaining certain financing including  
15 with respect to the two FCC AMTS license auctions, as well as favorable relations with equipment  
16 vendors, joint-venture candidate companies, end users of licenses and licensed systems, and others of  
17 importance to Plaintiffs licenses-based business plan, were reduced, delayed, and damaged;

18           (c.)     Plaintiffs has been delayed in, and reduced or prevented from, attempting,  
19 securing and closing certain licenses spectrum-sale and license-lease opportunities (i.e., sales and leases  
20 by Plaintiffs to third parties of Plaintiffs' valid licenses or portions thereof);

21           (d.)     Plaintiffs have incurred substantial legal and other costs in its attempts to mitigate  
22 and avoid the damages caused by Defendants' actions and omissions set forth herein. This, and the  
23 major delays in Plaintiffs' plans and actions caused by such Defendants' actions and omissions, have  
24 undermined Plaintiffs' ability to focus on and secure economic advantages arising out of timely and  
25 favorable relations with and actions before the FCC and the other above-noted parties essential to  
26 Plaintiffs' wireless business. Had Defendants acted in compliance with their legal obligations, Plaintiffs  
27 had the financial and other capability to and would have (i) applied for and obtained the AMTS  
28 spectrum in the Defendants Licenses and 2 placed this spectrum into operation of Stations, leases, sales,

1 and other uses, and (ii) succeeded in securing other economic advantages indicated above in relation to  
2 the FCC, equipment companies, financing parties, and others in the wireless industry. Defendants'  
3 interference with Plaintiffs' business relationship with the FCC and such other parties has caused  
4 damages in an amount to be proven at trial.

5 71. Due to Defendants' actions and omissions, Plaintiffs were blocked from seeking and  
6 obtaining from the FCC the spectrum in the Defendants Licenses and elsewhere in the United States  
7 from the time Plaintiffs were formed until the FCC terminated any possibility of seeking such spectrum  
8 by its freezing all licensing in the AMTS service for a period of time prior to its new exclusive method  
9 of AMTS licensing by auctioning Geographic Licenses. As a direct and proximate result of Defendants'  
10 interference, Plaintiffs incurred damages in an amount to be proven at trial.

11 72. The actions and deliberate omissions of Defendants were fraudulent, oppressive and  
12 malicious and were done either with the intent to injure the business of Plaintiffs or, at minimum in  
13 some cases, done with reckless disregard of a high probability that Plaintiffs would be damaged thereby.  
14 Plaintiffs are therefore entitled to an award of punitive damages from Defendants in an amount  
15 appropriate to punish and make an example of Defendants.

16 WHEREFORE, Plaintiffs pray judgment as hereinafter set forth.

17 **FOURTH CAUSE OF ACTION**  
18 **(Fraud)**  
19 **(Cancelled Licenses Only)**

20 73. Plaintiffs incorporate the allegations of all preceding paragraphs as though fully set forth  
21 herein.

22 74. At all times when Defendants affirmatively and falsely represented to Plaintiffs and other  
23 competitors that Defendants Licenses' Stations had been constructed by the deadline which caused the  
24 FCC to maintain such Stations as valid in its public licensing database and files, Defendants knew and  
25 intended that Plaintiffs would rely on those representations and would refrain from applying to the FCC  
26 for the AMTS spectrum in such Stations licenses because Plaintiffs would reasonably believe that the  
27 spectrum in these Stations was unavailable. The specific licenses for which defendants made  
28 misrepresentations are attached hereto as Exhibit A. In the following filings, on the following dates,  
defendants falsely said defendants had constructed licenses and had already "encumbered" the market:

1 In specific renewal applications principally in 2001, 2002 and 2003, defendants falsely represented that  
2 the subject licenses were valid and had met construction and operation requirements. Plaintiffs did  
3 reasonably rely on those representations and as a result incurred damages in an amount to be proven at  
4 trial.

5 75. At all times when Defendants failed to surrender the Defendants' licenses to the FCC for  
6 cancellation of component Stations not constructed or constructed as required by the construction  
7 deadline pursuant to FCC Rules so that the FCC would cancel the Station's authority in its public  
8 licensing database, Defendants knew and intended that Plaintiffs would rely on Defendants' failure to  
9 surrender the Defendants Licenses and consequently FCC maintenance of such Stations as valid in its  
10 public licensing database, and would refrain from applying for the AMTS spectrum in such Stations  
11 because Plaintiffs would reasonably believe that the spectrum in these Stations was unavailable.  
12 Plaintiffs did reasonably rely on those representations and as a result incurred damages in an amount to  
13 be proven at trial.

14 76. Plaintiff Warren Havens met directly with the owners of Regionet and others in 1999 in  
15 Southern California at Regionet's regional headquarters, and Fred Daniels and Paul Vanderhaden  
16 represented that they had options on all of PSI's licenses.

17 77. Plaintiffs did in fact reasonably rely on the above noted intentional misrepresentations  
18 and omissions by Defendants in refraining from applying for the AMTS spectrum licenses in the  
19 Defendants Licenses.

20 78. Due to Defendants' actions and omissions, Plaintiffs refrained from or were otherwise  
21 blocked from seeking and obtaining from the FCC the spectrum in the Defendants Licenses and  
22 elsewhere in the United States from the time Plaintiffs were formed until the FCC terminated any  
23 possibility of seeking such spectrum by its freezing/suspending all licensing in the AMTS service for a  
24 period of time prior to its new exclusive method of AMTS licensing by auctioning Geographic Licenses,  
25 and were damaged thereby in an amount to be proven at trial.

26 79. Defendant MCLM fraudulently represented to the FCC and to other bidders, including  
27 Plaintiffs: (i) that it was qualified to obtain a 35% bidding credit for Auction 61, when in fact it was not;  
28 and (ii) that it did not have various FCC-defined "affiliates" that it in fact did have. The FCC has



1 determined said facts, just stated, and such determinations were not appealed by MCLM and have  
2 become final. These false representations resulted in MCLM obtaining unfair bidding advantage in  
3 Auction 61 that caused the loss of licenses to Plaintiffs that they otherwise would have won at this  
4 auction had it not been for this unfair advantage and caused Plaintiffs to pay more for licenses they did  
5 win in this auction than they would have paid had it not been for this unfair advantage. As a result,  
6 Plaintiffs incurred damages in an amount to be proven at trial.

7 80. The actions of Defendants were fraudulent, oppressive and malicious and were done  
8 either with the intent to injure the business of Plaintiffs or done with reckless disregard of a high  
9 probability that Plaintiffs would be damaged thereby. Plaintiffs is therefore entitled to an award of  
10 punitive damages from Defendants in an amount appropriate to punish and make an example of  
11 Defendants.

12 WHEREFORE, Plaintiffs pray judgment as hereinafter set forth.

13 **FIFTH CAUSE OF ACTION**  
14 **(Fraud)**  
**(Challenged Licenses -- Ongoing)**

15 81. Plaintiffs incorporate the allegations of all preceding paragraphs as though fully set forth  
16 herein.

17 82. At all times when Defendants affirmatively and falsely represented to Plaintiffs and other  
18 competitors that Defendants Licenses' Stations had been constructed by the deadline which caused the  
19 FCC to maintain such Stations as valid in its public licensing database and files, Defendants knew and  
20 intended that Plaintiffs would rely on those representations and would refrain from applying to the FCC  
21 for the AMTS spectrum in such Stations licenses because Plaintiffs would reasonably believe that the  
22 spectrum in these Stations was unavailable. Plaintiffs did reasonably rely on those representations and  
23 as a result incurred damages in an amount to be proven at trial.

24 83. At all times when Defendants failed to surrender the Defendants' licenses to the FCC for  
25 cancellation of component Stations not constructed or constructed as required by the construction  
26 deadline pursuant to FCC Rules so that the FCC would cancel the Station's authority in its public  
27 licensing database, Defendants knew and intended that Plaintiffs would rely on Defendants' failure to  
28 surrender the Defendants Licenses and consequently FCC maintenance of such Stations as valid in its

1 public licensing database, and would refrain from applying for the AMTS spectrum in such Stations  
2 because Plaintiffs would reasonably believe that the spectrum in these Stations was unavailable.  
3 Plaintiffs did reasonably rely on those representations and as a result incurred damages in an amount to  
4 be proven at trial.

5 84. Plaintiff Warren Havens met directly with the owners of Regionet and others in 1999 in  
6 Southern California at Regionet's regional headquarters, and Fred Daniels and Paul Vanderhaden  
7 represented that they had options on all of PSI's licenses.

8 85. Plaintiffs did in fact reasonably rely on the above noted intentional misrepresentations  
9 and omissions by Defendants in refraining from and applying for the AMTS spectrum licenses in the  
10 Defendants Licenses.

11 86. Due to Defendants' actions and omissions, Plaintiffs refrained from or were otherwise  
12 blocked from seeking and obtaining from the FCC the spectrum in the Defendants Licenses and  
13 elsewhere in the United States from the time Plaintiffs were formed until the FCC terminated any  
14 possibility of seeking such spectrum by its freezing/suspending all licensing in the AMTS service for a  
15 period of time prior to its new exclusive method of AMTS licensing by auctioning Geographic Licenses,  
16 and were damaged thereby in an amount to be proven at trial.

17 87. The actions of Defendants were fraudulent, oppressive and malicious and were done  
18 either with the intent to injure the business of Plaintiffs or done with reckless disregard of a high  
19 probability that Plaintiffs would be damaged thereby. Plaintiffs is therefore entitled to an award of  
20 punitive damages from Defendants in an amount appropriate to punish and make an example of  
21 Defendants.

22 WHEREFORE, Plaintiffs pray judgment as hereinafter set forth.

23 **SIXTH CAUSE OF ACTION**  
24 **(Negligent Misrepresentation)**

25 88. Plaintiffs incorporate by reference the allegations of all preceding paragraphs as though  
26 fully set forth herein.

27 89. At all times when Defendants represented to the FCC for reporting in its public licensing  
28 database, as well as in various other FCC publicly-available filings and proceeding pleadings, that  
Stations in the Defendants Licenses had been constructed and their coverage requirement satisfied, or



1 otherwise explicitly or impliedly represented that the Defendants Licenses had not terminated by  
2 operation of law after the construction-coverage deadline, Defendants made such representations  
3 without any reasonable grounds to believe they were true.

4 90. The true facts were that the Defendants Licenses and/or a major percentage of their  
5 component Stations were terminated by operation of law, and under FCC Rules should have been  
6 surrendered to the FCC for cancellation in its public licensing database and made available for re-  
7 licensing by the FCC.

8 91. Plaintiffs relied on both Defendants' explicit and implicit representations, including its  
9 omission of the required return to the FCC of the terminated licenses, that the construction requirements  
10 of the Defendants Licenses and their component Stations had been met. Plaintiffs refrained from  
11 applying for the spectrum in the Defendants Licenses because Plaintiffs reasonably believed that said  
12 spectrum was unavailable for licensing.

13 92. Due to Defendants' negligent misrepresentations, Plaintiffs refrained from or were  
14 otherwise blocked from seeking and obtaining from the FCC the spectrum in the Defendants Licenses  
15 and elsewhere in the nation from the time Plaintiffs were formed until the FCC terminated any  
16 possibility of seeking such spectrum by its freezing all licensing in the AMTS service for a period of  
17 time prior to its new exclusive method of AMTS licensing by auctioning Geographic Licenses, and  
18 Plaintiffs were damaged thereby in an amount to be proven at trial

19 93. When MCLM represented to the FCC: (i) that it was qualified to obtain a 35% bidding  
20 credit for Auction 61, when in fact it was not; and (ii) that that it did not have various FCC-defined  
21 "affiliates" that it in fact it did have -- MCLM had no reasonable basis for believing that these  
22 representations were true. The FCC has determined said facts, just stated and such determinations were  
23 not appealed by MCLM and have become final. These negligent misrepresentations resulted in MCLM  
24 obtaining unfair bidding advantage in Auction 61 that caused the loss of licenses to Plaintiffs that they  
25 otherwise would have won at this auction had it not been for this unfair advantage, and caused Plaintiffs  
26 to pay more for licenses they did win in this auction than they would have paid had it not been for this  
27 unfair advantage.  
28

1 94. As a result of Defendant's negligent misrepresentations, as alleged above, Plaintiffs have  
2 been damaged in an amount to be proven at trial.

3 WHEREFORE, Plaintiffs pray judgment as hereinafter set forth.

4 **SEVENTH CAUSE OF ACTION**  
5 **(Intentional Interference with Contracts)**

6 95. Plaintiffs incorporate by reference the allegations of all preceding paragraphs as though  
7 fully set forth herein.

8 96. The Kurian Contract was a valid contract. Defendants knew of the Kurian Contract.

9 97. Defendants intentionally undertook the wrongful acts set forth herein in order to disrupt  
10 or induce a breach of the Kurian contract. Defendants knew that their acts were substantially certain to  
11 disrupt or induce a breach of the Kurian contract.

12 98. The Kurian contract was actually disrupted and breached because of Defendants'  
13 conduct, and as a direct and proximate result, the Plaintiffs suffered damages in an amount to be proven  
14 at trial.

15 99. The NUSCO Contract was a valid contract. Defendants knew of the NUSCO Contract.

16 100. Defendants intentionally undertook the wrongful acts set forth herein in order to disrupt  
17 or induce a breach of the NUSCO contract. Defendants knew that their acts were substantially certain to  
18 disrupt or induce a breach of the NUSCO contract.

19 101. The NUSCO contract was actually disrupted and/or breached because of Defendants'  
20 conduct, and as a direct and proximate result, the Plaintiffs suffered damages in an amount to be proven  
21 at trial.

22 102. The Defendants' intentional interference with the Kurian and NUSCO contracts were and  
23 remain fraudulent, oppressive and malicious and were done either with the intent to injure the business  
24 of Plaintiffs or with reckless disregard of a high probability that Plaintiffs would be damaged thereby,  
25 such that Plaintiffs are entitled to an award of punitive damages from Defendants in an amount  
26 appropriate to punish and make an example of Defendants.

27 WHEREFORE, Plaintiffs pray judgment as hereinafter set forth.  
28

**EIGHTH CAUSE OF ACTION**  
**(Conversion)**  
**(Cancelled Licenses)**

103. Plaintiffs incorporate by reference the allegations of all preceding paragraphs as though fully set forth herein.

104. As described above, after many licensed Stations of Defendants “automatically terminated” and the licensed spectrum involved “automatically reverted” exclusively to the Plaintiffs’ Geographic Licenses, Defendants retained control of and dominion over said Plaintiff spectrum, applied said spectrum to Defendants’ own uses, for profit, business opportunities, and other consideration, and caused actual blocking interference of Plaintiffs’ ownership and right of possession and use of said licensed spectrum. By such action, Defendants converted part of Plaintiffs’ FCC licenses: the parts constituted by said retained spectrum. Said conversion and use of Plaintiffs’ licenses continues to this time.

105. Defendants conversion actions were undertaken by fraud and deceit, and in violation of Federal law, referenced above. Defendant’s conversion actions were and remain fraudulent, oppressive and malicious and were done either with the intent to deplete and otherwise injure the business and viability of Plaintiffs or with reckless disregard of a high probability that Plaintiffs would be depleted or injured. Thus, Plaintiffs are entitled to an award of punitive damages from Defendants in an amount appropriate to punish and make an example of Defendants.

WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

**NINTH CAUSE OF ACTION**  
**(Conversion)**  
**(Challenged Licenses -- Ongoing)**

106. Plaintiffs incorporate by reference the allegations of all preceding paragraphs as though fully set forth herein.

107. As described above, after many licensed Stations of Defendants “automatically terminated” and the licensed spectrum involved “automatically reverted” exclusively to the Plaintiffs’ Geographic Licenses, Defendants retained control of and dominion over said Plaintiff spectrum, applied said spectrum to Defendants’ own uses, for profit, business opportunities, and other consideration, and caused actual blocking interference of Plaintiffs’ ownership and right of possession and use of said

1 licensed spectrum. By such action, Defendants converted part of Plaintiffs' FCC licenses: the parts  
 2 constituted by said retained spectrum. Said conversion and use of Plaintiffs' licenses continues to this  
 3 time.

4 108. Defendants conversion actions were undertaken by fraud and deceit, and in violation of  
 5 Federal law, referenced above. Defendant's conversion actions were and remain fraudulent, oppressive  
 6 and malicious and were done either with the intent to deplete and otherwise injure the business and  
 7 viability of Plaintiffs or with reckless disregard of a high probability that Plaintiffs would be depleted or  
 8 injured. Thus, Plaintiffs are entitled to an award of punitive damages from Defendants in an amount  
 9 appropriate to punish and make an example of Defendants.

10 WHEREFORE, Plaintiffs prays judgment as hereinafter set forth.

11 **TENTH CAUSE OF ACTION**  
 12 **(Injunctive Relief Under 47 U.S.C. § 401(b))**  
 13 **(Challenged Licenses -- Ongoing)**

14 109. Plaintiffs incorporate by reference the allegations of all preceding paragraphs as though  
 15 fully set forth herein.

16 110. As described above, Defendants have violated FCC rules that are Orders under 47 U.S.C.  
 17 §401(b) by violating the requirements to turn back in for cancellation licensed AMTS stations that were  
 18 not timely constructed or were permanently discontinued and that thus automatically terminated and  
 19 automatically reverted to Plaintiffs, by failing to file required annual reports to the FCC-governed  
 20 Universal Service Fund Administrator, and in other ways. Said Defendants violations were undertaken  
 21 by fraud and deceit and with intent of damaging Plaintiffs.

22 WHEREFORE, Plaintiffs prays for judgment as follows:

23 1. **On the First Cause of Action:**

- 24 a. For three times the amount of Plaintiffs' damages;
- 25 b. For preliminary and/or permanent injunctive relief;
- 26 c. For prejudgment and post judgment interest as permitted by law;
- 27 d. For an award of reasonable attorneys' fees in prosecuting the action, including under 47  
 28 U.S.C. §406; and
- e. For such other and further relief as the Court may deem proper.

2. **On the Second Cause of Action:**

- a. For general and special damages according to proof;
- b. For punitive damages;
- c. For prejudgment and post judgment interest as permitted by law;
- d. For an award of reasonable attorneys' fees in prosecuting the action, including under 47 U.S.C. §406; and
- e. For such other and further relief as the Court may deem proper.

3. **On the Third Cause of Action:**

- a. For general and special damages according to proof;
- b. For punitive damages;
- c. For prejudgment and post judgment interest as permitted by law;
- d. For an award of reasonable attorneys' fees in prosecuting the action, including under 47 U.S.C. §406; and
- e. For such other and further relief as the Court may deem proper.

4. **On the Fourth Cause of Action:**

- a. For general and special damages according to proof;
- b. For punitive damages;
- c. For prejudgment and post judgment interest as permitted by law;
- d. For an award of reasonable attorneys' fees in prosecuting the action, including under 47 U.S.C. §406; and
- e. For such other and further relief as the Court may deem proper.

5. **On the Fifth Cause of Action:**

- a. For preliminary and/or permanent injunctive relief;
- b. For an order requiring Defendants to disgorge all profits obtain through their 5 unfair business practices;
- c. For an award of reasonable attorneys' fees in prosecuting the action as permitted by law;
- d. For an award of reasonable attorneys' fees in prosecuting the action, including under 47 U.S.C. §406; and

1 e. For such other and further relief as the Court may deem proper.

2 **6. On the Sixth Cause of Action:**

3 a. For general and special damages according to proof;

4 b. For punitive damages;

5 c. For prejudgment and post judgment interest as permitted by law;

6 d. For an award of reasonable attorneys' fees in prosecuting the action, including under 47  
7 U.S.C. §406; and

8 e. For such other and further relief as the Court may deem proper.

9  
10 **7. On the Seventh Cause of Action:**

11 a. For general and special damages according to proof;

12 b. For punitive damages;

13 c. For prejudgment and post judgment interest as permitted by law;

14 d. For an award of reasonable attorneys' fees in prosecuting the action, including under 47  
15 U.S.C. §406; and

16 e. For such other and further relief as the Court may deem proper.

17  
18 **8. On the Eighth Cause of Action:**

19 a. For general and special damages according to proof;

20 b. For punitive damages;

21 c. For prejudgment and post judgment interest as permitted by law;

22 d. For an award of reasonable attorneys' fees in prosecuting the action, including under 47  
23 U.S.C. §406; and

24 e. For such other and further relief as the Court may deem proper.

25 **9. On the Ninth Cause of Action:**

26 a. For general and special damages according to proof;

27 b. For punitive damages;

28 c. For prejudgment and post judgment interest as permitted by law;

d. For an award of reasonable attorneys' fees in prosecuting the action, including under 47 U.S.C. §406; and

e. For such other and further relief as the Court may deem proper.

**12. On the Tenth Cause of Action:**

a. For an injunction under 47 U.S.C. §401(b) ordering Defendants: (i) to surrender to the FCC for cancellation all Defendant AMTS licensed stations that, as proved in this litigation, have terminated due to failures of Defendants to follow FCA and FCC rules that are Orders under 47 U.S.C. §401(b), as proved in this litigation, and (ii) to take other actions under other applicable FCC Orders that Defendants have failed to take, as proved in this litigation.

b. Upon a finding that Defendants have violated US antitrust law, for an Order under 47 U.S.C. §313 directing the FCC to revoke all Defendants FCC licenses, and that all rights under such licenses shall cease.

c. For general and special damages according to proof;

d. For punitive damages;

e. For prejudgment and post judgment interest as permitted by law;

f. For an award of reasonable attorneys' fees in prosecuting the action, including under 47 U.S.C. §406; and

g. For such other and further relief as the Court may deem proper.

Dated: October 14, 2008

**WINNE, BANTA, HETHERINGTON  
BASRALIAN & KAHN, P.C.**

/s/ R.N. Tendai Richards (RTR6023)

R. N. Tendai Richards

Attorneys for Plaintiffs

SKYBRIDGE SPECTRUM FOUNDATION, WARREN  
C. HAVENS, TELESARUS VPC, LLC, AMTS  
CONSORTIUM, LLC, INTELLIGENT  
TRANSPORTATION & MONITORING WIRELESS  
LLC, and TELESARUS HOLDINGS GB LLC



**CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 11.2**

Pursuant to 28 USC § 1746, I hereby certify under penalty of perjury that the matter in controversy is not related to any other pending matter or controversy.

**WINNE, BANTA, HETHERINGTON  
BASRALIAN & KAHN, P.C.**

/s/ R.N. Tendai Richards (RTR6023)

R. N. Tendai Richards

Dated: October 14, 2008

Declaration

I, Warren C. Havens, as President of Petitioner, hereby declare, under penalty of perjury, that the foregoing Reply Comments, including all Exhibits, was prepared pursuant to my direction and control and that all the factual statements and representations contained herein are true and correct.

*[Submitted Electronically. Signature on File.]*

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Warren C. Havens

Date: 29 January 2009

Certificate of Service

I, Warren C. Havens, certify that I have, on this 29<sup>th</sup> day of January 2009, caused to be served, by placing into the USPS mail system with first-class postage affixed, unless otherwise noted, a copy of the foregoing Reply Comments, including Exhibits, to the following:<sup>3</sup>

Erica Myers  
Telecommunications Access Policy Division  
Wireline Competition Bureau  
Via e-mail to: Erica.Myers@fcc.gov

David Duarte  
Telecommunications Access Policy Division  
Wireline Competition Bureau  
Via e-mail to: David.Duarte@fcc.gov.

FCC Office of Inspector General  
Federal Communications Commission  
(Via email to: [kent.nilsson@fcc.gov](mailto:kent.nilsson@fcc.gov) ; [jon.stover@fcc.gov](mailto:jon.stover@fcc.gov) )

Scot Stone, Deputy Chief, PSCID  
Federal Communications Commission  
(via email to: [scot.stone@fcc.gov](mailto:scot.stone@fcc.gov) )

Best Copy and Printing, Inc.  
Via email to: [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com) and [fcc2@bcpiweb.com](mailto:fcc2@bcpiweb.com)

Dennis Brown (legal counsel for Maritime and Mobex)  
8124 Cooke Court, Suite 201  
Manassas, VA 20109-7406  
(Via USPS mail, divided into several envelopes due to weight, and courtesy copy, not for purposes of service, via email to: [d.c.brown@att.net](mailto:d.c.brown@att.net) )

Sandra DePriest and Donald DePriest  
Care of Dennis Brown  
206 North 8<sup>th</sup> Street  
Columbus, MS 39701

National Rural Telecommunications Cooperative  
Attn: Jack Harvey  
2121 Cooperative Way  
Herndon, VA 20171  
Via email only to: [jharvey@nrtc.org](mailto:jharvey@nrtc.org) )

MariTel, Inc.  
4635 Church Rd.

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<sup>3</sup> The mailed copy being placed into a USPS drop-box today may not be processed by the USPS until the next business day.

Suite 100  
Cumming, GA 30028-4084  
Attn: Jason Smith  
Via email only to: [jsmith@maritelusa.com](mailto:jsmith@maritelusa.com)

*[Filed Electronically. Signature on File]*

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Warren Havens